Pavilion at Forrestal Nursing and Rehabilitation *and* SEIU 1199 New Jersey Health Care Union.[1]
Case 22–CA–26628

January 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On September 21, 2005, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions except as modified below, and to adopt the recommended Order as modified.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with SEIU 1199 New Jersey Health Care Union (the Union) when it canceled eight consecutive bargaining sessions between the first meeting in March 2004 and the second meeting in November 2004, and when it failed to provide presumptively relevant information to the Union pursuant to its request. The judge also found that, when the parties did meet, the Respondent continued to act in bad faith by maintaining an intransigent position regarding the wage reopener negotiations.

We find, in agreement with the judge, that the Respondent refused to bargain in good faith by delaying bargaining and then denying the Union information to which it was entitled.[3] However, we do not pass on whether there was intransigent conduct establishing a separate violation of Section 8(a)(5) and (1). Although this approach results in the deletion of paragraph 1(b) of the judge's recommended Order, the Order retains two other provisions regarding good-faith bargaining as well as a proscription of "like or related" conduct. We believe that these provisions, together with the affirmative parts of the Order, are an appropriate remedy for the conduct involved herein.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Pavilion at Forrestal Nursing and Rehabilitation, Princeton, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Delete paragraph 1(b) and reletter the subsequent paragraphs.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain in good faith with SEIU 1199, New Jersey Health Care Union, by engaging in delaying tactics and by refusing to furnish relevant necessary information to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, meet at reasonable times and bargain in good faith concerning the wage reopener.

[1] We have amended the caption to reflect the disaffiliation of the Service Employees International Union from the AFL–CIO effective July 25, 2005.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In affirming the judge's finding that the Respondent refused to bargain in good faith by delaying bargaining, Chairman Battista notes that the Respondent gave no reason for canceling bargaining on seven of the eight occasions when it canceled scheduled bargaining sessions.

WE WILL furnish to the Union the information it requested in its December 16, 2004 letter concerning payroll, overtime hours and compensation, costs and employee participation in benefit plans and information about temporary employees performing bargaining unit work.

PAVILION AT FORRESTAL NURSING AND REHABILITATION

Robert Gonzalez, Esq., for the General Counsel.
David F. Jasinski, Esq. and *Karen Williams, Esq. (Jasinski and Williams P.C.),* of Newark, New Jersey, for the Respondent.
Mr. Norman DeGeneste, of Iselin, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Newark, New Jersey, on March 22, 2005. The complaint alleges that Respondent, in violation of Section 8(a)(5) of the Act, refused to bargain with the Union concerning a wage reopener provision of the collective-bargaining agreement and refused to furnish information to the Union. Respondent denies that it has engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in May, 2005, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey corporation, with an office and place of business in Princeton, New Jersey, operates a nursing home providing inpatient medical care. The Respondent annually derives gross revenues in excess of $100,000 and it purchases and receives in Princeton, New Jersey, goods and materials valued in excess of $5000 directly from points outside the State of New Jersey. The parties agree, and I find, that Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act and that SEIU 1199, New Jersey Health Care Union, AFL–CIO, is a labor organization with the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On March 20, 2001, the Union was certified as the exclusive collective-bargaining representative of the following unit of Respondent's employees:

> All full-time and part-time certified nurses assistants, housekeeping employees, dietary employees, laundry employees, staff licensed practical nurses, unit clerks, unit secretaries, activities/recreations employees, maintenance employees employed by Respondent at its Princeton, NJ facility, but excluding registered nurses, office clerical employees, supervisors, watchmen and guards.

The Respondent and the Union are parties to a collective-bargaining agreement with a term from December 5, 2001, to April 3, 2005, which provides in schedule A:[1]

> WAGE INCREASES
>
> A. All employees will receive the increases below on the dates listed or the minimum, whichever is greater.
>
> B. All employees shall receive wage increases as follows:
>
> Effective—upon ratification: Nursing—2% all other classifications—$.40 per hour
>
> Effective—4/1/02 contract reopener
>
> Effective—4/1/03 All employees—3.5%
>
> Effective—4/1/04 contract reopener—the parties agree to meet at least 30 days prior to April 1, 2004 to negotiate wages and benefits for the last year of this Agreement.

B. The Negotiations

Stacy Harris was the union area director with responsibility for negotiating with the Respondent. She resigned her position on April 15, 2004. Before this date, Harris made several phone calls to David Jasinski, Esq., to inquire whether he would be representing the Respondent for the contract reopener negotiations.[2] Jasinski said that the facility was being operated by a new purchaser and he was not sure if he would be retained. Eventually, Harris and Jasinski scheduled negotiations for the wage reopener on March 15, 2004.

Harris testified that on March 15, 2004, she met with Jasinski and another company representative. Harris was accompanied by a union delegate and some unit employees.[3] Harris gave Jasinski the union demands which she had written by hand. The document provided as follows:

> 1. Effective 4-1-2004 the ER will implement a 4% wage increase across the Board & added to the minimum rates.
>
> 2. Effective 4-1-2004 the ER will contribute ½ % of gross pay to the SEIU 1999 Training & Educ. Fund.
>
> 3. Effective 4/1-2004 the ER will contribute ¼ % of gross pay to the NJ Alliance Quality Care in Long Term Care.
>
> 4. The ER agrees to participate in monthly labor management & health & Safety Committees.
>
> All other terms & conditions to remain the same.

Harris told Jasinski that the requested increase in health and welfare fund contributions would help Respondent recruit LPN employees. She said that the union demand for contributions to the SEIU training and education fund would also help in re-

[1] The entire collective-bargaining agreement was not entered into evidence herein.

[2] Harris had negotiated six or seven different collective-bargaining agreements with Jasinski.

[3] Harris had brought her young son with her: it was his birthday and she was taking him out to celebrate. One of the union representatives cared for the boy while Harris met with Jasinski.

cruiting because it would assist employees to pay for the expensive clinical training needed by an LPN.

Harris testified that Jasinski replied that he would have to consult his client. He said he would present his counterproposal at the next meeting. Jasinski said nothing about the Respondent's ability to pay a wage increase. Harris asked him for some future bargaining dates, but Jasinski said he did not have a calendar with him and he asked Harris to call his office.

Harris recalled that the meeting lasted only about 15 minutes.

Jasinski testified that he has been labor counsel to Respondent since 1998 or 1999. Jasinski stated that when he spoke to Harris before the March 15, 2004 meeting she was concerned about the health and welfare contributions then being made by Respondent. Harris wanted contributions based on a percentage of gross pay rather than the flat monthly rate that was specified in the contract. Jasinski told Harris that because the contract was expiring in a year he did not think Respondent would provide any increases in view of the fact that it would face new negotiations 1-year later.

Jasinski stated that when he received Harris' proposals on March 15, 2004, he told her that he was not inclined to make changes in the collective-bargaining contract because it would be expiring in 1 year. Jasinski also told Harris that he would consider the union proposal and come back with a counterproposal. Jasinski's notes of this meeting were admitted into evidence.[4] They show that Harris maintained that Respondent's wages were low and that she wanted to bring them in line with other facilities. Jasinski's notes show that he replied that he was not concerned with other facilities. He said the rate of unit employee turnover at Respondent had settled down and that wages and benefits were competitive with other employers. Jasinski said the union proposal was for a significant wage increase. He told Harris that the Employer proposed to maintain the status quo, but was not pleading poverty. The Respondent saw no reason for an increase at this time and it had the intention to negotiate a new contract in 2005. Jasinski said that Government reimbursement rates had not been increased and the Union had not shown why a change in the contract was warranted.

Jasinski testified that sometime after Harris left the Union he spoke on the telephone to a union agent named Allkoff. Although the purpose of the conversation was to discuss an unrelated matter, Jasinski mentioned that Repondent was not prepared to make changes to the contract pursuant to the reopener. Allkoff said he would send a 10-day strike notice and he was surprised when Jasinski informed him that the no-strike clause in the contract applied to the contract reopener.

Norman DeGeneste, an organizer for the Union, was responsible for the negotiations with Respondent after Harris' resignation. DeGeneste encountered Jasinski in negotiations for another facility and asked the latter for a date to negotiate on behalf of Respondent's unit employees. Jasinski gave DeGeneste a time and date which DeGeneste entered in has calendar: May 27 at 10 a.m. On May 27, 2004, Jasinski telephoned De Geneste and cancelled the meeting. The two then agreed to meet on June 30. DeGeneste came to the facility on June 30. He did not see Jasinski, but he spoke to him on the telephone and asked for another date for bargaining. Jasinski gave him the date of July 29. While at the facility on June 30, DeGeneste met with administrator, Virginia Cranston, and the head of human resources, Yvette Beslow. DeGeneste testified that Beslow said she did not see a problem in giving the employees an increase and that they deserved it. She said she would speak to the attorney and get back to DeGeneste. Apparently she never contacted DeGeneste about the raise. DeGeneste acknowledged that his affidavit given to a Board agent on November 3, 2004, did not mention Beslow's remark that there was no problem about raises.

DeGeneste testified that Jasinski cancelled the July 29, 2004 meeting and the two men agreed to meet on August 26. Jasinski canceled the August 26 meeting and agreed to meet on September 15. Then Jasinski telephoned and canceled the September 15 meeting due to a religious holiday, but he agreed to meet Jasinski on September 29. Jasinski cancelled the September 29 meeting and agreed to meet on October 28. Jasinski cancelled the October 28 meeting and agreed to meet on November 1. Jasinski cancelled the November 1 meeting and agreed to meet on November 29.

DeGeneste testified that the parties met for negotiations on November 29, 2004. DeGeneste was accompanied by unit employee Franckline Bernard. Jasinski and John Pilek, the executive director of Respondent, represented the Employer. DeGeneste told Jasinski and Pilek that he was ready to negotiate the wage and benefit proposal given to the Respondent at the first session and that he wanted the employer's response. DeGeneste testified that Jasinski replied that "they could not afford to give any increases this year" because the nursing home had just closed 10 beds and the census was low. Pilek said that out of 170 beds only 146 were filled with patients. Then the parties caucused for 15 or 20 minutes. Jasinski came back to the meeting and told DeGeneste that he had just learned that Respondent owed money to the benefit funds. At that point DeGeneste took a document out of his briefcase and put it on the table for Jasinski to look at. This was a document dated October 28, 2004, and entitled "Pay-out Agreement and Confession of Judgment between 1199/SEIU Greater New York Funds and Pavilion at Forrestal." Jasinski said if the Union gave Respondent relief on the money owed to the funds then he might be able to give a wage increase. DeGeneste said he could not make a decision on money owed to the funds. DeGeneste asked Jasinski whether he would consider a wage increase if the Union came back with a different proposal. Jasinski said that he would not consider giving a raise. He remarked that the Union had likely readied a proposal for the contract expiration in April 2005, and he said at that time the Employer would be ready to negotiate wages and benefits.

DeGeneste's notes of this meeting were introduced into evidence. They quote Jasinski as saying, "no increases" and they show the figures of 170 for total beds and 146 for census to date. The notes also show that management gave a figure of

[4] Jasinski stated that he often writes notes of meetings after the end of the meeting to summarize what was said. He did not specify whether the notes in evidence were written in this manner nor when they were actually written.

$250,000 for the delinquency to the funds and cited a $50,000-per-month payment. The notes say, "If Union give a relief of the $250,000, the NH will be able to give the workers an increase this year." DeGeneste's notes do not say that the Employer stated it could not afford to give increases. DeGeneste's affidavit states, "Jasinski responded that the employer could not afford to give any increases this year but the contract is expiring in April of 05 and the Union probably already created a proposal for bargaining and Pavilion would be prepared to discuss increases in wages and benefits for next year."

Franckline Bernard testified that Jasinski said the Employer could not afford to give a raise because it was behind on payments and there was a low census. When DeGeneste asked whether a lower union demand would induce Respondent to grant a raise, Jasinski said no, they just could not afford to give people a raise.

Jasinski testified while engaged in scheduling bargaining dates with DeGeneste he informed him that the Respondent was not in a position to provide any changes to the existing contract. At the November 29, 2004 bargaining session Jasinski told DeGeneste that the contract would expire in a few months and that would be the time to bring up changes in wages and benefits. Jasinski said that the Employer saw no reason to make changes at an earlier time because its pay scale was competitive and turnover had ceased. Jasinski did not recall that Pilek discussed the census nor the confession of judgment in favor of the benefit funds, but he did recall that Respondent owed money to the funds. Jasinski recalled saying that Respondent would pay the sums due to the funds. Jasinski testified that DeGeneste asked whether the employer would consider a lesser wage increase but Jasinski told him that he would not change the status quo. Jasinski stated that he did not discuss the Respondent's financial ability; the issue for him was competitiveness of wages and the ability to retain employees.

Jasinski's notes of the meeting show that he praised the unit employees' efforts and told the Union that "things have improved." But, Jasinski said, "[W]e do not think that this is the time to make changes. The contract is not far away. We will be back here in a short time to address a new contract." The notes say, "We continue to believe the status quo is the best course. . . . Not pleading poverty—mere difference of opinion."

John Pilek did not recall much about this meeting. The only facts he could testify to with assurance were that Jasinski said the Employer was going to maintain the status quo, that Respondent was competitive in recruiting employees and that they would be back at the table again in a few months because the contract expired in April 2005.

DeGeneste testified that he never canceled any meetings that were scheduled with Jasinski. His calendar shows that he had written down three tentative dates to meet in August but DeGeneste testified that Jasinski never confirmed these with him. DeGeneste recalled that on August 11, Jasinski telephoned him while DeGeneste was far from the facility dealing with a termination in Atlantic City. DeGeneste did not have a confirmed meeting with Jasinski that day but Jasinski was at the facility and he asked whether DeGeneste could come to meet with him. DeGeneste was not able to drive to the facility due to his other duties. DeGeneste was sure that this was not a "mix up"; he was certain that the August 11 date was not a firm date for negotiations.

On December 16 and 23, 2004, DeGeneste sent information requests to Respondent. These letters were prepared for his signature by his supervisor. Respondent has not provided any of the information requested by the Union.

The information requested on December 16 included:

> 1) Total gross annual payroll for the bargaining unit.
>
> 2) Number of overtime hours worked by bargaining unit employees and the compensation paid for this overtime.
>
> 3) Number of hours worked by any per diem, agency, or temporary employees in bargaining unit positions and the amount paid to said agencies and employees.
>
> 4) Cost to the Employer for each benefit plan utilized by bargaining unit employees, including health, dental, prescription, vision, disability, life insurance and pension. Please state the number of Bargaining employees who is [sic] participating in every category of each benefit plan.
>
> 5) Description and cost of any capital improvements to the facility.
>
> 6) Any acquisition or sale of facilities by the Employer.
>
> 7) Copy of cost reports submitted, including any supplemental submissions, for reimbursement for Medicaid and from any other public entity or funding source.

The information requested on December 23 included:

> 1. Financial statements prepared by your accountants or auditors for 2002, 2003 and 2004.
>
> 2. All federal and state tax returns, including and quarterly returns filed for the years 2002 through 2004. [Sic.]
>
> 3. Documents showing unpaid invoices for accounts payable at the end of 2003 and to date for 2004.
>
> 4. Documents showing the year end cash balance for 2003 and to date for 2004.
>
> 5. Documents showing accounts receivables for year end 2003 and to date for 2004.

I note that no testimony was presented to support the Union's requests for information.

C. Discussion and Conclusions

The General Counsel contends that Respondent has bargained in bad faith by engaging in delaying tactics, making unreasonable bargaining demands, maintaining an intransigent position concerning the wage reopener without making an effort to compose its differences with the Union and failing to provide relevant and necessary information.

The General Counsel points out that Respondent delayed bargaining by canceling all the consecutive bargaining sessions with the Union between the first meeting in March and the second meeting in November 2004. In his testimony, Jasinski did not specifically deny DeGeneste's testimony that he cancelled bargaining sessions or did not appear for scheduled negotiations on May 27, June 30, July 29, August 26, September 15 and 29, October 28, and November 1, a total of eight occasions. This was an egregious course of dilatory tactics which

violated the Respondent's duty to meet and bargain with the Union. *Calex Corp.*, 322 NLRB 977 (1997).

The General Counsel cites Respondent's unchanging statement that it would not grant a wage increase pursuant to the reopener because the entire contract was up for negotiations in 2005 as evidence that the Employer maintained an intransigent position while refusing to consider the Union's counterdemand of a smaller wage increase. Indeed, Jasinski's own testimony establishes on its face that before March 15, 2004, he informed Harris that the Respondent would not agree to any wage increase pursuant to the April 2004 reopener because there would be new negotiations 1-year later. Jasinski adhered to this line when he met with Harris on March 15, he repeated this resolution to Allkoff when he told the latter that Respondent would not make changes to the contract pursuant to the reopener and Jasinski repeated this position to DeGeneste while scheduling dates with DeGeneste. Jasinski continued to inform the Union that it did not intend to bargain a wage increase pursuant to the reopener when negotiations resumed on November 29: Jasinski told DeGeneste that the time to increase wages would be next year and he insisted that the Respondent would maintain the status quo on wages because they would be back at the table again soon. When DeGeneste offered to reduce the Union's demand for a 4-percent wage increase, Jasinski reiterated that Respondent would not change the status quo. Thus, Jasinski's testimony shows that he entered the contract reopener negotiations with a firm resolve not to increase wages or benefits and he adhered to this position throughout the year 2004 by informing various union agents that the employer would not grant any increases. Jasinski testified that he maintained this position not because of any inability to pay a wage increase: he repeatedly testified that the employer would not grant a wage increase and would not increase benefits because it expected to be negotiating a new contract in 2005. Respondent, thus, entered into the discussions with a firm resolve not to negotiate in 2004, because it would be obliged to negotiate again in 2005.

It is true that Respondent did discuss the Union's contentions that increases in wages and benefits would help in recruitment. Respondent told the Union that employee retention had ceased to be a problem at the facility and that it did not have to give an increase to remain competitive. Respondent also cited a low patient census as a reason for refusing to give a wage increase. However, these were "add-ons" to Respondent's consistently repeated insistence throughout 2004 that it was not going to give a wage or benefit increase because the parties would be back in negotiations early in 2005.

DeGeneste maintained that Jasinski offered to give a raise in return for relief from the funds. Jasinski does not recall mentioning this. Based on DeGeneste's testimony and his notes, I find that Jasinski did mention the debt to the funds and that he asked for relief. I agree with the General Counsel's argument that Jasinski knew that DeGeneste had no power to bind the funds in any agreement. Although no evidence was introduced as to the precise governance of the benefit funds in question, it is safe to say that the trustees are not controlled solely by the Union herein. Indeed, the employees covered by the funds work for many different employers in the greater New York area. Thus, whatever may have been said about the funds, it is clear that Jasinski did not seriously propose in bargaining that he would grant a wage increase in return for debt relief. Jasinski would have known that any forgiveness by the funds would involve a complicated set of negotiations with all the trustees who would have no ostensible reason to agree based on the facts of the instant record. Jasinski's mention of Respondent's obligation to the funds did not in any way affect his admitted and unyielding position that no wage or benefit increase would be agreed to before the 2005 contract negotiations. In fact, DeGeneste's testimony shows that right after Jasinski made his purported proposal to trade relief from the funds for a wage increase DeGeneste asked whether Jasinski would consider a Union demand for a lesser wage increase. Jasinski said he would not consider giving a raise.

The witnesses disagree whether Jasinski cited inability to pay as a reason for failing to grant increases in wages and benefits pursuant to the 2004 reopener. DeGeneste and Bernard both testified that Jasinski said Respondent could not afford a raise due to low patient census and debt to the funds: Jasinski denied this. DeGeneste's notes, which were taken during the meeting, do not support his testimony or his affidavit. The notes say "no increases," they show the low patient census and the fund delinquency and they mention debt relief, but they do not say that Respondent actually stated that it could not afford a pay increase. If Jasinski had actually told DeGeneste that Respondent had no money to increase wages or benefits, DeGeneste could not have failed to write down the words he used. The General Counsel bears the burden of proof on this issue. In the circumstances I do not believe that I can find that Respondent cited inability to pay as a reason to deny increases to the employees. I note that there is a significant difference between an employer which discusses hard times generally and one which maintains that it is incapable of finding the money to support any increases. The Board has recently defined the term "inability to pay" in *AMF Trucking & Warehousing, Inc.*, 342 NLRB 1125 (2004), as follows:

> [T]he phrase means more than the assertion that it would be difficult to pay, or that it would cause economic problems or distress to pay. "Inability to pay" means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated. Thus, inability to pay is inextricably linked to nonsurvival in business.

Based on my finding that the Respondent did not claim "inability to pay" as that phrase has been defined by the Board, I find that Respondent was under no duty to furnish the financial information sought in the Union's letter of December 23, 2004.[5]

However, I reach a different conclusion concerning portions of the Union's December 16, 2004 letter requesting certain information. It is well established that an employer has a duty to furnish the collective-bargaining representative with information that is necessary and relevant to the Union's representation of employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432

[5] The duty to furnish the information in an appropriate circumstance was established in *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

(1967). To the extent the December 16 letter refers to information concerning the unit employees' terms and conditions of employment it is deemed presumptively relevant to the Union's duty to represent the employees. *Atlanta Hilton & Tower*, 271 NLRB 1600 (1984). If information is requested concerning a subject that is not presumptively relevant, the Union must offer evidence to demonstrate its need for the information.

Information about wages and hours is deemed presumptively relevant. Thus, it was unlawful for Respondent to fail to provide the Union with information regarding total gross annual payroll for the bargaining unit, number of overtime hours worked by bargaining unit employees and compensation for the overtime, cost to the employer for the unit benefit plans and information about the number of employees participating in each category of each plan. *New Surfside Nursing Home*, 330 NLRB 1146, 1149 (2000). This is the information sought in items 1, 2, and 4 of the December 16 letter. As to the information requested in item 3 concerning per diem, agency or temporary employees, that information relates to unit work performed by nonemployees. The Board has held that information regarding temporary workers performing bargaining unit work is presumptively relevant. *United Graphics*, 281 NLRB 463, 465 (1986).

The information requested in items 5 and 6 of the December 16 letter relates to capital improvements, acquisitions and sales made by Respondent. The General Counsel apparently does not contend that this information is presumptively relevant. No testimony was offered to show why the Union required this information and I do not find that Respondent had any duty to furnish it. Finally, the Union's need for the Medicaid and other funding information requested in item 7 of the December 16 letter was not discussed specifically in any testimony presented by the General Counsel. Medicaid and similar information has not been held to be presumptively relevant; rather, the Union must establish its need for the information. In the absence of testimony establishing the Union's need for the Medicaid information requested in item 7, I do not find that the Respondent unlawfully failed to comply with that request. *Troy Hills Nursing Home*, 326 NLRB 1465, 1466 (1998).

CONCLUSIONS OF LAW

1. SEIU 1199, New Jersey Health Care Union, AFL–CIO is the exclusive collective-bargaining representative of the employees of the Respondent pursuant to Section 9(a) of the Act, in the following unit:

> All full-time and part-time certified nurses assistants, housekeeping employees, dietary employees, laundry employees, staff licensed practical nurses, unit clerks, unit secretaries, activities/recreations employees, maintenance employees employed by Respondent at its Princeton, NJ facility, but excluding registered nurses, office clerical employees, supervisors, watchmen and guards.

2. By engaging in delaying tactics, maintaining an intransigent position with regard to the contract reopener and refusing to furnish relevant and necessary information, Respondent has refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Pavilion at Forrestal Nursing and Rehabilitation, Princeton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with SEIU 1199, New Jersey Health Care Union, AFL–CIO by engaging in delaying tactics to avoid meeting with the Union.

(b) Refusing to bargain in good faith with the Union by maintaining an intransigent position with regard to the contract reopener.

(c) Refusing to bargain in good faith with the Union by denying the Union the information requested in items 1, 2, 3, and 4 of its letter of December 16, 2004.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet at reasonable times and bargain with the Union as the exclusive representative of the employees in the appropriate unit set forth above concerning wages and benefits and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union, in writing, the information requested in items 1, 2, 3, and 4 of its letter of December 16, 2004.

(c) Within 14 days after service by the Region, post at its facility in Princeton, New Jersey, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

copy of the notice to all current employees and former employees employed by the Respondent at any time since March 15, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.